



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/155240

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Public Assistance Collection Unit in regard to Medical Assistance, a hearing was held on May 15, 2014, at Milwaukee, Wisconsin. The record was held open post-hearing for the Petitioner to submit tax returns for 2012. On May 27, 2014, the Petitioner submitted her 2012 tax returns. The returns were forwarded to the agency for review. On June 5, 2014, the agency submitted its analysis of the returns and the impact on the overpayment. The record was closed on June 5, 2014.

The issue for determination is whether the agency properly determined that there was an overissuance of BC+ benefits to the Petitioner in the amount of \$5,318.49 for the period of January 1, 2012 – December 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Keegan Trentzsch
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was the licensee and sole owner/operator of a licensed child care center known as [REDACTED] from November, 2010 through at least June, 2013. In 2012, [REDACTED] was a participant in the Wisconsin Shares program and received gross payments of \$86,431.53 (net payments of \$84,926.68) from the program. On June 20, 2013, [REDACTED] was terminated from participation in the Wisconsin Shares program.
3. In December, 2011, the agency mailed self-employment income report forms (SEIRFs) to the Petitioner as part of her six month review. On December 30, 2011, the agency processed the Petitioner's review and SEIRFs. The Petitioner reported on the SEIRFs that she earns \$5,106.30/month with expenses of \$5,550/month. The agency calculated income of \$0. On January 10, 2012, the Petitioner's case was confirmed and FS benefits were approved in the amount of \$668/month effective January 1, 2012.
4. On June 4, 2012, the agency conducted a phone interview with the Petitioner. Petitioner reported that she is employed part-time and owns a child care center. She reported she had not yet filed 2011 tax returns and requested an extension. On June 8, 2012, the Petitioner submitted a SEIRF worksheet for May, 2012. The agency budgeted the Wisconsin Shares payments issued to [REDACTED] for May, 2012 of \$7,543.21 as Petitioner's income and budgeted gross expenses based on the SEIRFs. Based on this information, the agency budgeted Petitioner's earned income as \$444.62/month. She was approved for FS benefits in the amount of \$668/month effective July 1, 2012.
5. The Petitioner's household size at all times relevant herein was reported as four and included herself and three children: [REDACTED], [REDACTED] and [REDACTED].
6. On August 16, 2013, the agency requested the Petitioner's tax returns for 2012. The Petitioner reported that she had not filed her tax returns yet and had received an extension. The agency requested a copy of the Petitioner's extension and/or tax returns on numerous occasions between August, 2013 and January, 2014. The Petitioner did not provide the extension or tax returns to the agency prior to the hearing.
7. On January 29, 2014, the agency issued a Wisconsin Medicaid and Badgercare Plus Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits issued for the Petitioner in the amount of \$2,319.73 for the period of January 1, 2012 – December 31, 2012. The net capitation for Petitioner's BC+ benefits for 2012 was \$2,067.24. The net paid in BC+ claims for the Petitioner was \$252.49.
8. On January 29, 2014, the agency issued a Wisconsin Medicaid and Badgercare Plus Overpayment Notice to [REDACTED], [REDACTED] and [REDACTED], "c/o [the Petitioner]" informing them that the agency intends to recover an overissuance of BC+ benefits issued for [REDACTED], [REDACTED] and [REDACTED] in the amount of \$2,998.76 for the period of January 1, 2012 – December 31, 2012. The net capitation paid for 2012 was \$978.82 for [REDACTED], \$598.22 for [REDACTED] and \$701.82 for [REDACTED]. The net claims paid for 2012 was \$487.36 for [REDACTED] and \$232.54 for [REDACTED].
9. On February 3, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.
10. On May 24, 2014, the Petitioner filed 2012 tax returns. On May 27, 2014, the Petitioner provided the tax returns to the agency.

DISCUSSION

The department may recover any overpayment of medical assistance that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. § 49.497(1).

Recipients must report any change of income that affects their benefits to the agency by the 10th day of the month following the change. BCH, § 27.3.

Under BC+ rules in 2012, caretaker parents were ineligible if income was more than 200% of the federal poverty level (FPL). Children in families with income over 200% of the FPL were eligible with a premium. If income was between 133% and 200%, children were eligible and the parents were eligible but had to pay a premium. BCH, § 19.1.

The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. Wis. Stat. § 49.497(1)(b). The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. If the overpayment is caused by the failure to report income accurately, the claim will be the amount of the premium that would have been paid had the income been reported correctly. If the household would have been over the premium limit, the overpayment would be all MA/BC+ payments made on the household's behalf. See BadgerCare Plus Eligibility Handbook (BCH), § 28.4.2.

The agency originally took action to recover an alleged overissuance for January – December, 2012 based on the Petitioner's failure to submit 2012 tax returns as requested. The agency first requested the 2012 tax returns from the Petitioner in August, 2013. At the time of the Petitioner's review in December, 2011, the agency based its eligibility determinations on the Petitioner's SEIRFs. For the period of January – June, 2012, the agency budgeted \$0 in earned income based on the SEIRFs which reported expenses higher than income. For the period of July – December, 2012, the agency used the actual payments issued by the Wisconsin Shares program as the Petitioner's income and the SEIRFs submitted to the agency for expenses to budget \$444.62/month in earned income.

The Petitioner testified that she provided all documents as requested by the agency including SEIRFs as part of her reviews. She did not dispute the agency using the Wisconsin Shares program payments as her gross income. Though the Petitioner had not yet filed her 2012 tax returns by the time of the hearing, she did file them on May 24, 2014 and the returns were submitted to the agency on May 28, 2014. The Petitioner reported \$56,187 in business income and adjusted gross income of \$52,218 on her federal 1040. Schedule C reports gross income from [REDACTED] in the amount of \$85,077. It reports total expenses of \$28,890. Net profit was \$56,187.

Self-employment income is calculated based on anticipated earnings. The agency uses tax returns and/or self-employment income report forms to calculate average anticipated monthly earnings. BCH, § 16.4.3.2. The agency testified that the Petitioner did provide SEIRFs as requested for 2012 which were used in calculating her income for purposes of determining her BC+ benefits beginning January, 2012.

Prior to July 1, 2012, BC+ members were only required to report income changes when their total monthly gross income exceeded 100% FPL, 150% FPL, 200% FPL, 250% FPL or 300% FPL for their group size. The income change was required to be reported by the 10th of the month, following the month, in which the total income exceeded the following thresholds. The change would impact the

following month's benefits. Effective July 2, 2012, BC+ members were required to report income changes when the total monthly gross income exceeded 100% FPL, 133% FPL, 150% FPL, 185% FPL, 200% FPL, 250% FPL, 300% FPL, 350% FPL, 400% FPL. BCH, § 27.3.

In order to establish an overpayment based on client error, the agency must demonstrate that the Petitioner failed to accurately report her income, failed to accurately report changes in her income or otherwise comply with BC+ regulations. The agency did not produce any of the SEIRFs submitted by the Petitioner which were used to determine her eligibility for 2012. Initially, the agency relied on the Petitioner's failure to submit her tax returns and the fact that she received \$84,926.68 in payments from the Wisconsin Shares program as the basis for seeking to recover a total overpayment. With the Petitioner's submission of her tax returns, the agency calculated an average monthly income of \$4,625.46 based on her report of income of \$56,187 for 2012. Based on this averaging of the annual income which results in a monthly average income of \$4,675, the agency determined the Petitioner's monthly income in 2012 exceeded 200% of FPL for a household of four (\$3,974 in 2012) and it seeks to recover net capitation for the Petitioner and all three children as well as net paid claims for all household members issued in 2012.

The Petitioner's tax returns suggest that the Petitioner's monthly income for 2012 was incorrectly budgeted at some point. The gross income reported on Schedule C of \$85,077 is very close to net payments the Petitioner's child care center received of \$84,926.68. The expense side of the calculation appears to be the issue. The Petitioner's Schedule C indicates total expenses of the year of \$28,890. According to the case comments the agency produced, the agency budgeted \$5,550/month in expenses for the period of January – June, 2012. There is no evidence to demonstrate the expenses budgeted for July – December, 2012. Though there appears to have been an error in budgeting at some point in 2012, the agency's evidence is insufficient to demonstrate whether this was agency error or client error. There is also insufficient evidence to demonstrate when the Petitioner's income exceeded the reporting requirements of the federal poverty level, triggering a requirement on the part of the Petitioner to report. The agency did not produce the SEIRFs submitted by the Petitioner or other evidence to demonstrate that the Petitioner inaccurately reported income or expenses. There was no evidence produced that the Petitioner was given notice of her requirement to report and no evidence that the Petitioner failed to report as required. Averaging the Petitioner's monthly income based on the Petitioner's total income for the year as reported on her tax return does not meet the agency's burden to demonstrate that the Petitioner's income was over the income limit in any particular month or that any error in calculation or reporting was the Petitioner's error.

In summary, I can conclude based on the evidence presented that the Petitioner's income as reported on her 2012 tax returns indicates the likelihood of an overpayment of FS benefits in 2012 due to Petitioner's income exceeding the program's income limit and her requirement to report when her income exceeded her reporting requirement. I cannot conclude, based on the evidence presented, whether the overissuance was due to an agency error in calculating the Petitioner's income or the Petitioner's error in failing to report. Further, if it was Petitioner's error, there is insufficient evidence to conclude when the Petitioner's income exceeded reporting requirements, triggering the requirement to report the change in income to the agency.

Therefore, I am remanding this matter to the agency to obtain and review the Petitioner's SEIRFs, tax returns and any other relevant information to determine whether there was an overissuance of FS benefits to the Petitioner in 2012, when the overissuance started and who or what caused the overissuance. The agency will need to issue new Medicaid and Badgercare Plus Overpayment Notices to the Petitioner based on its findings and the Petitioner will have new appeal rights with regard to those determinations. I would respectfully suggest that the new Notices include manually generated notices that provide more detail as to the agency's new findings than the standard CARES generated notice so that the agency's basis for determining an overissuance is clear.

CONCLUSIONS OF LAW

There is sufficient evidence to conclude that there was an overissuance of BC+ benefits to the Petitioner and her children in 2012. There is insufficient evidence to determine when the overissuance occurred during 2012 and whether it was due to agency error or client error.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to obtain and review the Petitioner's SEIRFs, tax returns and any other relevant information to determine whether there was an overissuance of BC+ benefits to the Petitioner and her children in 2012, when the overissuance started and who or what caused the overissuance. Based on its review and analysis, if the agency determines there is an overissuance, the agency shall issue new Notices to the Petitioner. The notices shall give the Petitioner new appeal rights regarding the determinations. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

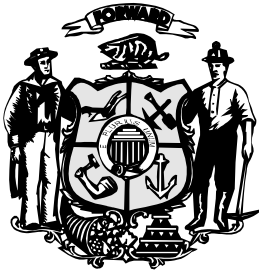
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of June, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 18, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability